

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC	§	
	§	CIVIL ACTION NO. 6:12-CV-499-LED
VS.	§	(LEAD CASE)
	§	
	§	
TEXAS INSTRUMENTS, INC., ET AL	§	

BLUE SPIKE, LLC	§	
	§	CIVIL ACTION NO. 6:12-CV-576-LED
VS.	§	(CONSOLIDATED CASE)
	§	
AUDIBLE MAGIC CORPORATION, ET AL	§	

DEFENDANT TUNECORE, INC.'S ANSWER AND AFFIRMATIVE DEFENSES

Defendant TuneCore, Inc. ("TuneCore") state for their Answer to the Complaint filed by plaintiff Blue Spike L.L.C. ("Plaintiff") in Civil Action No. 6:12-CV-576, which was consolidated with the above-captioned case pursuant to the Consolidation Order entered on October 9, 2012, as follows:

ANSWER

NATURE OF THE SUIT

1. In answer to paragraph 1, TuneCore admits that Plaintiff purports to allege a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

PARTIES

2. In answer to paragraph 2, TuneCore admits that the Patents-in-Suit on their face

identify “Blue Spike Inc.” as the assignee. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in that paragraph and, on that basis, denies each and every one of those remaining allegations.

3. In answer to paragraph 3, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

4. In answer to paragraph 4, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

5. In answer to paragraph 5, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

6. In answer to paragraph 6, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

7. In answer to paragraph 7, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

8. In answer to paragraph 8, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

9. In answer to paragraph 9, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on

that basis, denies each and every one of those allegations.

10. In answer to paragraph 10, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

11. In answer to paragraph 11, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

12. In answer to paragraph 12, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

13. In answer to paragraph 13, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

14. In answer to paragraph 14, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

15. In answer to paragraph 15, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

16. In answer to paragraph 16, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

17. In answer to paragraph 17, TuneCore is without knowledge or information

sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

18. In answer to paragraph 18, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

19. In answer to paragraph 19, TuneCore admits that it is a corporation organized under the laws of Delaware; that it has a principal place of business located at 55 Washington Street, Suite 822, Brooklyn, New York 11201; and that it can be served through its registered agent, The Corporation Trust Company, located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. Except as expressly admitted, TuneCore denies and every allegation of this paragraph.

20. In answer to paragraph 20, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

21. In answer to paragraph 21, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

22. In answer to paragraph 22, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

23. In answer to paragraph 23, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

24. In answer to paragraph 24, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

25. In answer to paragraph 25, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

26. In answer to paragraph 26, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

JURISDICTION AND VENUE

27. In answer to paragraph 27, TuneCore admits that Plaintiff purports to allege a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 101 *et seq.*, and that this Court has subject matter jurisdiction over this action.

28. In answer to paragraph 28, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

29. In answer to paragraph 29, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

JOINDER

30. In answer to paragraph 30, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore. TuneCore specifically denies that it uses Audible Magic's digital fingerprint based technology for automatic content recognition. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

FACTUAL BACKGROUND

A. Moskowitz's History

31. In answer to paragraph 31, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

32. In answer to paragraph 32, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

33. In answer to paragraph 33, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

34. In answer to paragraph 34, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

35. In answer to paragraph 35, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on

that basis, denies each and every one of those allegations.

36. In answer to paragraph 36, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

37. In answer to paragraph 37, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

38. In answer to paragraph 38, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

39. In answer to paragraph 39, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

40. In answer to paragraph 40, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

41. In answer to paragraph 41, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

42. In answer to paragraph 42, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

43. In answer to paragraph 43, TuneCore is without knowledge or information

sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

44. In answer to paragraph 44, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

B. Patents-in-Suit

45. In answer to paragraph 45, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

46. In answer to paragraph 46, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

47. In answer to paragraph 47, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

48. In answer to paragraph 48, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

49. In answer to paragraph 49, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

50. In answer to paragraph 50, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on

that basis, denies each and every one of those allegations.

C. The Accused Products and Services

51. In answer to paragraph 51, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

52. In answer to paragraph 52, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

53. In answer to paragraph 53, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

54. In answer to paragraph 54, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

55. In answer to paragraph 55, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

56. In answer to paragraph 56, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

57. In answer to paragraph 57, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

58. In answer to paragraph 58, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

59. In answer to paragraph 59, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

60. In answer to paragraph 60, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

61. In answer to paragraph 61, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

62. In answer to paragraph 62, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

63. In answer to paragraph 63, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

64. In answer to paragraph 64, TuneCore denies and every allegation of this paragraph.

65. In answer to paragraph 65, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

66. In answer to paragraph 66, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

67. In answer to paragraph 67, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

68. In answer to paragraph 68, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

69. In answer to paragraph 69, TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph and, on that basis, denies each and every one of those allegations.

70. In answer to paragraph 70, TuneCore admits that Plaintiff purports to use the term “Accused Products” in the Complaint to refer to all products of all defendants discussed in the Complaint.

71. In answer to paragraph 71, TuneCore admits that it has not sought or obtained a patent license from Plaintiff. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

72. In answer to paragraph 72, TuneCore denies that it is using any method, device, or system taught by Plaintiff’s Patents-in-Suit. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they

relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

**COUNT 1:
ALLEGED INFRINGEMENT OF U.S. PATENT NO. 8,214,175**

73. TuneCore incorporates by reference its responses to paragraphs 1 through 72 above.

74. In answer to paragraph 74, TuneCore admits that the ‘175 patent is entitled “Method and Device for Monitoring and Analyzing Signals,” and that the ‘175 patent on its face identifies “Blue Spike Inc.” as the assignee. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in that paragraph and, on that basis, denies each and every one of those remaining allegations.

75. In answer to paragraph 75, TuneCore admits that, on its face, Exhibit A appears to be a copy of the ‘175 Patent and that it states that it was issued on July 3, 2012. As to the remaining allegations in this paragraph, TuneCore denies each and every one of those remaining allegations.

76. In answer to paragraph 76, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore, and specifically denies that it has infringed, continues to infringe, or has induced or contributed to the infringement of on any valid claim of the ‘175 patent. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

77. In answer to paragraph 77, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore, and specifically denies that it has infringed, continues to infringe, or has induced or contributed to the infringement of on any valid claim of the ‘175

patent. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

78. In answer to paragraph 78, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore, and specifically denies that Plaintiff has been, or will be, damaged in any manner or sum, or at all, as a result of any wrongful action on the part of TuneCore. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

79. In answer to paragraph 79, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore, and specifically denies that it has infringed, continues to infringe, or has induced or contributed to the infringement of on any valid claim of the '175 patent. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

80. In answer to paragraph 80, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

**COUNT 2:
ALLEGED INFRINGEMENT OF U.S. PATENT NO. 7,949,494**

81. TuneCore incorporates by reference its responses to paragraphs 1 through 80 above.

82. In answer to paragraph 82, TuneCore admits that the '494 patent is entitled "Method and Device for Monitoring and Analyzing Signals," and that the '494 patent on its face identifies "Blue Spike Inc." as the assignee. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in that paragraph and, on that basis, denies each and every one of those remaining allegations.

83. In answer to paragraph 83, TuneCore admits that, on its face, Exhibit B appears to be a copy of the '494 Patent and that it states that it was issued on May 24, 2011. As to the remaining allegations in this paragraph, TuneCore denies each and every one of those remaining allegations.

84. In answer to paragraph 84, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore, and specifically denies that it has infringed, continues to infringe, or has induced or contributed to the infringement of on any valid claim of the '494 patent. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

85. In answer to paragraph 85, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore, and specifically denies that it has infringed, continues to infringe, or has induced or contributed to the infringement of on any valid claim of the '494 patent. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

86. In answer to paragraph 86, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore, and specifically denies that Plaintiff has been, or will be,

damaged in any manner or sum, or at all, as a result of any wrongful action on the part of TuneCore. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

87. In answer to paragraph 87, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore, and specifically denies that it has infringed, continues to infringe, or has induced or contributed to the infringement of on any valid claim of the '494 patent. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

88. In answer to paragraph 88, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

**COUNT 3:
ALLEGED INFRINGEMENT OF U.S. PATENT NO. 7,660,700**

89. TuneCore incorporates by reference its responses to paragraphs 1 through 88 above.

90. In answer to paragraph 90, TuneCore admits that the '700 patent is entitled "Method and Device for Monitoring and Analyzing Signals," and that the '700 patent on its face identifies "Blue Spike Inc." as the assignee. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in that paragraph and, on that basis, denies each and every one of those remaining allegations.

91. In answer to paragraph 91, TuneCore admits that, on its face, Exhibit C appears to be a copy of the '700 Patent and that it states that it was issued on February 9, 2010. As to the remaining allegations in this paragraph, TuneCore denies each and every one of those remaining allegations.

92. In answer to paragraph 92, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore, and specifically denies that it has infringed, continues to infringe, or has induced or contributed to the infringement of on any valid claim of the '700 patent. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

93. In answer to paragraph 93, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore, and specifically denies that it has infringed, continues to infringe, or has induced or contributed to the infringement of on any valid claim of the '474 patent. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

94. In answer to paragraph 94, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore, and specifically denies that Plaintiff has been, or will be, damaged in any manner or sum, or at all, as a result of any wrongful action on the part of TuneCore. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

95. In answer to paragraph 95, TuneCore denies each and every allegation in this

paragraph as they relate to TuneCore, and specifically denies that it has infringed, continues to infringe, or has induced or contributed to the infringement of on any valid claim of the '700 patent. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

96. In answer to paragraph 96, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

**COUNT 4:
ALLEGED INFRINGEMENT OF U.S. PATENT NO. 7,346,472**

97. TuneCore incorporates by reference its responses to paragraphs 1 through 96 above.

98. In answer to paragraph 98, TuneCore admits that the '472 patent is entitled "Method and Device for Monitoring and Analyzing Signals," and that the '472 patent on its face identifies "Blue Spike Inc." as the assignee. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in that paragraph and, on that basis, denies each and every one of those remaining allegations.

99. In answer to paragraph 99, TuneCore admits that, on its face, Exhibit D appears to be a copy of the '472 Patent and that it states that it was issued on March 18, 2008. As to the remaining allegations in this paragraph, TuneCore denies each and every one of those remaining allegations.

100. In answer to paragraph 100, TuneCore denies each and every allegation in this

paragraph as they relate to TuneCore, and specifically denies that it has infringed, continues to infringe, or has induced or contributed to the infringement of on any valid claim of the '472 patent. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

101. In answer to paragraph 101, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore, and specifically denies that it has infringed, continues to infringe, or has induced or contributed to the infringement of on any valid claim of the '472 patent. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

102. In answer to paragraph 102, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore, and specifically denies that Plaintiff has been, or will be, damaged in any manner or sum, or at all, as a result of any wrongful action on the part of TuneCore. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

103. In answer to paragraph 103, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore, and specifically denies that it has infringed, continues to infringe, or has induced or contributed to the infringement of on any valid claim of the '472 patent. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

104. In answer to paragraph 104, TuneCore denies each and every allegation in this paragraph as they relate to TuneCore. TuneCore is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in that paragraph as they relate to other defendants and, on that basis, denies each and every one of those allegations as they relate to other defendants.

REQUEST FOR RELIEF

To the extent a response is required, TuneCore denies that Plaintiff is entitled to any of the requested relief and denies all allegations contained in the request for relief.

DEMAND FOR JURY TRIAL

To the extent a response is required, TuneCore admits that Plaintiff's Complaint contains a request for jury trial on all issues that may be determined by a jury.

GENERAL DENIAL

Except as expressly admitted above, and to the extent a response is required, TuneCore denies each and every allegation in the Complaint.

AFFIRMATIVE DEFENSES

Without admitting or acknowledging that it has the burden of proof as to any of them, TuneCore pleads the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE
(Lack of Personal Jurisdiction)

105. This Court lacks personal jurisdiction over TuneCore.

SECOND AFFIRMATIVE DEFENSE
(Improper or Inconvenient Venue)

106. Venue in this district is improper or inconvenient.

THIRD AFFIRMATIVE DEFENSE
(Failure to State a Claim)

107. Plaintiff fails to state any claim upon which relief may be granted.

FOURTH AFFIRMATIVE DEFENSE
(Lack of Standing)

108. On information and belief, Plaintiff lacks standing to assert the Patents-in-Suit.

FIFTH AFFIRMATIVE DEFENSE
(Non-Infringement)

109. TuneCore has not willfully or otherwise infringed the Patents-in-Suit either directly, indirectly, literally, or under the doctrine of equivalents, and TuneCore has not induced or contributed to any infringement by another of any valid and enforceable claim of the Patents-in-Suit.

SIXTH AFFIRMATIVE DEFENSE
(Laches/Waiver/Equitable Estoppel)

110. Plaintiff's suit is barred under the doctrines of laches, waiver, and/or equitable estoppel as a result of Plaintiff's delay in bringing suit.

SEVENTH AFFIRMATIVE DEFENSE
(Adequate Remedy at Law)

111. Plaintiff has an adequate remedy at law for any alleged infringement of the Patents-in-Suit, and there is no basis for a grant of equitable relief.

RESERVATION OF ADDITIONAL DEFENSES

Plaintiff's complaint against TuneCore is premised on the incorrect assumption that TuneCore uses Audible Magic's digital fingerprint based technology for automatic content recognition. *See* Complaint, ¶ 30. Prior to service of the Complaint, TuneCore's counsel informed Plaintiff's counsel that TuneCore has no commercial relationship with Audible Magic and does not use any of its products. TuneCore requested that plaintiff dismiss TuneCore

immediately, but Plaintiff's counsel ignored this request. TuneCore reserves the right to assert additional defenses, including defenses based on the invalidity and/or unenforceability of the patents-in-suit, that may be developed through discovery in this action or additional investigation, should it become necessary for TuneCore to undertake such discovery or additional investigation.

PRAYER FOR RELIEF

WHEREFORE TuneCore requests entry of judgment in its favor and against Plaintiff as follows:

- A. That Plaintiff's Complaint against TuneCore be dismissed in its entirety with prejudice;
- B. That Plaintiff take nothing by reason of this lawsuit;
- C. That the Court declare this an exceptional case under 35 U.S.C. § 285;
- D. That the Court award attorney's fees and costs to TuneCore; and
- E. That the Court award TuneCore such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

TuneCore demands a trial by jury on all issues so triable.

Dated: November 21, 2012

Respectfully submitted,

/S/ MELISSA R. SMITH

Melissa R. Smith
Lead Attorney
Texas Bar No. 24001351
melissa@gillamsmithlaw.com
GILLAM & SMITH
303 S. Washington Avenue
Marshall, TX 75670
Telephone: (903) 934-8450
Facsimile: (903) 934-9257

Kenneth L. Nissly
California Bar No. 77589
knissly@omm.com
Susan van Keulen
California Bar No. 136060
svankeulen@omm.com
Susan Roeder
California Bar No. 160897
sroeder@omm.com
O'MELVENY & MYERS LLP
2765 Sand Hill Road
Menlo Park, California 94025
Telephone: (650) 473-2600
Facsimile: (650) 473-2601

Counsel for Defendant TuneCore, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic services are being served with a copy of DEFENDANT TUNECORE's ANSWER TO COMPLAINT, via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 21st day of November, 2012.

/s/ Melissa R. Smith